



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Allen Organ Company--Reconsideration

File: B-231473.2

Date: August 31, 1988

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### DIGEST

A solicitation which called for a pipe organ, excluding electronic organs, is not unduly restrictive where the organ is to be placed in a chapel specially designed and constructed to complement the architecture of a building listed in the National Register of Historical Places. The design of the organ is inherently linked to the functional purpose of harmonizing the instrument with its environment.

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### DECISION

Allen Organ Company requests reconsideration of our dismissal of its protest as untimely under request for proposals (RFP) No. 502-37-88, issued by the Veterans Administration (VA), for a pipe organ.

We grant Allen's request for reconsideration on the timeliness issue but deny the merits of its protest.

We dismissed Allen's protest as untimely because the record indicated that Allen submitted a protest of an alleged solicitation defect along with its initial proposal to the VA. Allen Organ Co., B-231473, June 9, 1988, 88-1 CPD ¶ 552. Our Office does not consider a protest included in a proposal as timely because the contracting agency is under no obligation to open, read or evaluate proposals until after the closing date and, therefore, has no prior notice of a deficiency alleged in such a protest. Paramount Systems, Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646.

Allen has now produced evidence, which is not controverted by the VA, that it had filed an earlier agency-level protest concerning the alleged solicitation defect prior to the amended closing date of May 9, 1988, and Allen did not receive VA's denial of its protest until May 11, 1988. Therefore, Allen's protest to our Office, received on May 18, was timely filed. 4 C.F.R. § 21.2(a)(3) (1988).

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Allen argues that the RFP's specification of a design requirement, which excludes organs that produce sounds electronically, is inappropriate and unduly restrictive of competition. Allen contends that the RFP should not require a certain method of producing sound but rather should only require that a desired quality and type of sound be produced. Allen states that if the RFP were not limited to pipe organs, Allen could supply an electronic organ at substantially less cost.

Allen states that it is the largest manufacturer of church organs in the world, and has supplied electronic organs for churches, cathedrals, military chapels and concert halls worldwide, many of which have replaced pipe organs. Allen further contends that the six rank pipe organ required in the RFP is a small instrument lacking versatility.<sup>1/</sup> It states that an Allen digital computer organ will provide more than six ranks and features not available on pipe organs, which make the Allen organ more flexible and better able to fulfill the VA's needs. Allen also alleges that pipe organs require periodic tuning, whereas, Allen electronic organs do not.

This solicitation was issued to procure an organ for use at the newly completed chapel at the VA Medical Center (VAMC), Alexandria, Louisiana. The Chaplain Service at the VAMC requested an organ as part of the establishment of musical programs to enhance the religious and spiritual growth of the veteran population and staff. The Chaplain Service requested that an organ be purchased which would complement the quality of the Baldwin baby grand piano which was already in the chapel. The VA states that the specifications set-out requirements for a windblown pipe organ which is appropriate for the small chapel, seating 100 persons, in which it is to be placed.

The contracting officer made her determination after discussion with VA staff members which indicated that a small windblown pipe organ would best serve the VAMC's needs. Expert advice from the local chapter of the American Guild of Organists (AGO) and input from the national AGO and other professional organists unanimously recommended a windblow organ. Professional musicians also informed the contracting officer that they preferred playing an organ which produced authentic sound rather than an electronic organ which produced an imitation sound. Further, the VA decided that a pipe organ requires less maintenance than an

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<sup>1/</sup> A rank is a graduated set of organ pipes of the same kind and tonal color.

electronic organ. Finally, the VA states that the VAMC is listed in the National Register of Historical Places and the new chapel was designed and constructed to complement the existing architectural style of the VAMC. The VA determined that a pipe organ would better blend with the historical setting than would an electronic organ.

In its response to the VA's report Allen states that it has supplied all of the military departments with its product and the Air Force considers the two electronic organs which Allen offered here as being most appropriate for its chapels worldwide. In light of this, Allen questions how the VA's minimum needs differ from so many chapels and churches throughout the world. Allen also contends that its electronic organs would be less expensive to maintain than pipe organs and contends that the Air Force uses Allen Organs in hot and humid climates with no significant maintenance problem. Allen alleges that its organ can be made to play loudly or gently by means of an expression volume pedal, but lesser pipe organ's do not have this feature. Finally, with respect to the VA's concerns for obtaining an appropriate organ to be used in the chapel's historic setting, Allen points to the electronic organs it has installed in churches throughout Europe which are hundreds of years old as evidence that its organ would meet the VA's needs.

When a protester challenges solicitation requirements as being unduly restrictive of competition, and submits some support for that proposition, the procuring agency must establish prima facie support for its position that the restrictions it imposes are reasonably related to its needs. Phillips Cartner & Co., Inc., B-224370.2, Oct. 2, 1986, 86-2 CPD ¶ 382. This requirement reflects the agency's obligation to use specifications that permit full and open competition and that contain restrictive provisions only to the extent necessary to satisfy the agency's legitimate needs. 41 U.S.C. § 253a(a)(2) (Supp. IV 1986). If the agency provides the necessary support for the specifications, the burden shifts back to the protester to show that the specifications are clearly unreasonable. Phillips Cartner & Co., Inc., B-224370.2, supra, American Science and Engineering, Inc., B-225161.2, Mar. 5, 1987, 87-1 CPD ¶ 252.


Contracting officials are in the best position to know the government's actual needs because they are familiar with the conditions under which the goods or services will be used. See Libby Corp., et al., B-220392, et al., Mar. 7, 1986, 86-1 CPD ¶ 227. Therefore, the determination of the government's needs and the best method of accommodating those needs are primarily matters within the contracting agency's

discretion. Bataco Industries, Inc., B-212847, Feb. 13, 1984, 84-1 CPD ¶ 179. We will not substitute our judgment for that of the contracting agency absent clear and convincing evidence that the agency's judgment is unreasonable and that the specifications unduly restrict competition. Ameriko Maintenance Co., B-221728, Apr. 1, 1986, 86-1 CPD ¶ 309.

The VA has made a prima facie showing that the solicitation's specifications are necessary to meet the government's actual needs. Here, among other needs, the agency states that the design of the organ is inherently linked to the functional purpose of harmonizing the instrument with its historic environment. The pipes themselves represent a legitimate requirement that the organ be in concert with the specially designed chapel and the historic architecture of the VAMC. The fact that electronic organs may be less expensive does not invalidate this rationale. The VA's minimum need is for a pipe organ, even though that means it must obtain a more expensive organ. The fact that other old churches and cathedrals have purchased Allen organs does not nullify the VA's legitimate objective of preserving the historical symmetry of the chapel with the VAMC. The goals and purposes of purchasing electronic organs in those cases may have been different from the VA's specific objective under this RFP. Allen has not shown that its digital computer organ would blend with the historic setting of this chapel the way a pipe organ will. In these circumstances, we cannot conclude that the agency's determination of its needs was unreasonable.

Finally, we note that the use of a precise design specification does not automatically provide a basis for finding a solicitation unduly restrictive. Morse Boulger, Inc., B-224305, 66 Comp. Gen. \_\_\_\_ 1986, 86-2 CPD ¶ 715. Although design requirements are inappropriate if an agency can state its minimum needs in terms of a performance specification which alternative designs could meet, Allen's alternate design cannot meet the VA's requirements. Id.

The protest is denied.

*for*   
James F. Hinchman  
General Counsel